

## REMARKS

Claims 1, 3-9 and 12-16 are pending.

### **35 USC 103(a)**

Claims 1-9 and 12 are rejected under 35 USC 103(a) as being unpatentable over Fingeli, US 5053055.

In particular the examiner points to the mixtures IV and VI of column 9 and mixture V found in columns 8 and 9.

The examiner admits that the prior art fails to teach a specific example of a mixture having both fluorescent whitening agents (Formulae 1 and 2) as required by the instant claims. However, examiner submits that this would have been obvious to one of ordinary skill in the art.

The applicants would like to point out that U.S. 4,778,623 in Examples 20-22 discloses a 2:1 or 1:2 mixture fluorescent whitening agents according to the instant application (formula 1 and 2). Thus the applicants believe US 4,778,623 to be the closest prior art.

### **Second Declaration Under 1.132**

The applicants are submitting a Second Declaration under 1.132.

This second Declaration differs than the First Declaration submitted on November 27, 2007 by adding an additional data point (example C) for mixtures according to the invention. The second Declaration also addresses questions of concern noted by the examiner in his Final Rejection of February 22, 2008.

The examiner is of the opinion that the applicants do not provide evidence of unexpected, unobvious or superior results and that the one data point provided in the First Declaration does not support the scope of the existing claim.

Dr. Jean-Jacques Donze, a co-inventor of the present application and one skilled in the art and in a position to know has addressed the examiner's concerns relating to tint value and light fastness results.

#### Tint Value under 2

Examiner states that both the prior art and instant application show results within 0.2 of 2 and no error values are provided to show reliable evidence of unexpected results.

The tint value is an average of 4 measurements. The standard deviation for the tint value is about  $\pm 0.05$ . Thus a difference of 0.2 is real. Secondly, the tint value for fluorescent white, has a tolerance of 0.2 difference. This tolerance is widely practice by most brandhouses. One skilled in the art would say that the difference between 1.9 and 2.2 is known as significant when visually assessed. The whitened fabric sample with 2.2 appears really greener. It is known that such a greening is usually seen as a disadvantage by most textile finishers as being associated with a lack of development of the whitening agent.

#### Light Fastness

A rating of 6 corresponds to a significant fading after 220 hours exposure in the Xenotest and 90 days exposure to daylight. A rating of 7 corresponds to 400 hours in the Xenotest and 170 days exposure to daylight. Thus a 6-7 rating corresponds to about 310 hours Xenotest and 130 days exposure daylight which is clearly considerably worse than a rating of 7. All textile finishers consider the difference between 6-7 and 7 as meaningful and significant.

The Second Declaration adds an additional data point showing a mixture of 15% (1a) and 85% (2c). Applicants believe the additional point addresses the examiner's concern for lack of support for the present claimed scope. The additional data point is intermediate (15% for 1a and 85% for 2c), thus supporting the present range scope.

The improvements shown in the Declaration could not have been predicted based on Fringeli or US 4,778,623 or US 5053055. Unexpected results indicate unobviousness,

#### **Copy of International Standard ISO 105-B02**

Reconsideration and withdrawal of the rejection of claims 1, 3-9 and 12-16 is respectfully solicited in light of the remarks and Second Declaration.

Since there are no other grounds of objection or rejection, passage of this application to issue with claims 1, 3-9 and 12-16 is earnestly solicited.

Applicants submit that the present application is in condition for allowance. In the event that minor amendments will further prosecution, Applicants request that the examiner contact the undersigned representative.

Respectfully submitted,



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Enclosures:

1.132 signed second declaration and copy of ISO 105-B02.